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Drug and Alcohol Clearinghouse, Part II

The Drug and Alcohol Clearinghouse web site is open for registration so you should visit it and set up log-in information. Once the system goes "live" on January 6, 2020, you'll be required to use it to query a driver's history. Also, there may be times when you need to report information to the Clearinghouse. In addition, you should encourage your drivers to register as well. They'll need to do this in order to view their own information and to approve an employer's access request.

You should also revise your Drug and Alcohol Policy to include a list of all of the infractions that will be reported to the Clearinghouse:

- A verified positive, adulterated, or substituted drug test results
- An alcohol confirmation test with a concentration of 0.04 or higher
- A refusal to submit to a drug or alcohol test
- An employer's report of actual knowledge, as defined at 49 CFR § 382.107
- On duty alcohol use pursuant to 49 CFR § 382.205
- Pre-duty alcohol use pursuant to 49 CFR § 382.207
- Alcohol use following an accident pursuant to 49 CFR § 382.209
- Drug use pursuant to 49 CFR § 382.213
- A SAP's report of the successful completion of the return-to-duty process
- A negative return-to-duty test
- An employer's report of completion of follow-up testing

In general, information will be reported to the Clearinghouse by Medical Review Officers (MRO) and Substance Abuse Professionals (SAP). However, in the event of an alcohol positive (BAC of 0.04 or higher), that information is not sent to an MRO and remains with the motor carrier. In that case you would be required to report that positive to the Clearinghouse within three days. Here are some other instances that would require a motor carrier to report to the Clearinghouse:

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- Drug use pursuant to 49 CFR § 382.213

Drivers will be identified in the Clearinghouse by their CDL number. The chain of custody forms used for urine specimen collection and blood alcohol testing contain a line for the driver's Social Security Number or Employee ID number. You should check with your service provider to make sure that they have or will soon be transitioning to putting the driver's CDL number on the chain of custody form.

In addition to motor carriers and drivers, others will be authorized to access the Clearinghouse data:

- Consortia/third-party administrators (C/TPAs)
- Medical review officers (MROs)
- Substance abuse professionals (SAPs)
- Motor carrier enforcement / roadside inspection personnel
- State driver licensing agencies
- The National Transportation Safety Board when investigating a crash

Beginning on January 6, 2020, motor carriers must query the Clearinghouse before allowing a newly-hired commercial motor vehicle driver (or current employee who transfers into such a position) to begin operating a commercial motor vehicle. Drivers must sign a consent form allowing the employer to do so. Motor Carriers must also query the Clearinghouse at least once per year for each driver they currently employ. Drivers must sign a consent form allowing the employer to do so. The employer must maintain records of all queries and information obtained in response to the query, for a period of three years.



The Clearinghouse web site (link listed below) contains answers to 50 frequently asked questions. Several of particular interest are:

If a driver has a drug and alcohol program violation in one state, then applies for a CDL in another state, will the Clearinghouse be able to connect that driver's drug and alcohol violation history to the new CDL?

Yes, the Clearinghouse will identify drivers who move frequently and obtain CDLs in different states and link those CDLs in order to maintain complete and accurate information on such drivers.

Will employees need to be queried annually based upon the calendar year or by hire date?

Employees must be queried at least once within a 365 day period based on their hire date, or another 12 month period determined by the employer, as long as the requirements of 382.701(b) are met.

What is the difference between a full and a limited query?

A limited query allows an employer to determine if an individual driver's Clearinghouse record has any information about resolved or unresolved drug and alcohol program violations, but does not release any specific violation information contained in the driver's Clearinghouse record. Limited queries require only a general driver consent, which is obtained outside the Clearinghouse; this general consent is not required on an annual basis, it may be effective for more than one year. However, the limited consent request must specify the time frame the

driver is providing consent for.

A full query allows the employer to see detailed information about any drug and alcohol program violations in a driver's Clearinghouse record. An employer must obtain the driver's electronic consent in the Clearinghouse prior to the release of detailed violation information during the full query.

What action will CDL drivers be able to take in the Clearinghouse?

Drivers will be able to:

- View their own driver record electronically.
- Provide electronic consent to release detailed drug and alcohol program violation information to a current or prospective employer.
- Identify a substance abuse professional (SAP) so the SAP may enter specific information regarding the driver's return-to-duty (RTD) activities.

To complete the actions outlined above, drivers must be registered in the Clearinghouse. Drivers who register early will have their Clearinghouse accounts and contact preferences set up, allowing them to quickly respond to query requests from employers on or after January 6, 2020.

<https://clearinghouse.fmcsa.dot.gov/>

Oral Fluid Drug Testing

Currently urine analysis is the only method of drug testing recognized by the DOT. Although hair testing has been discussed and studied for quite some time, it still appears to be years away. Recently the Department of Health and Human Services (HHS) established guidelines for the use of oral fluids in Federal workplace testing programs, which would include tests conducted under regulations established by the DOT.

However, these HHS guidelines don't automatically authorize trucking companies to begin using this new process. The Federal Motor Carrier Safety Administration (FMCSA) will need to use the rulemaking process to introduce this change to the drug testing protocols. The first step will be an Advance Notice of Rulemaking which will invite comments from the industry.

Oral fluid testing does have advantages. The collection process is not invasive and it's observed which would tend to rule out adulterated or altered specimens. Also, very recent drug use will show up in an oral fluid test. On the negative side, the window for detection is around two days as opposed to up to seven days for a urine based test.

HHS does not expect that oral fluid collection will replace urine based testing. They estimate that it may eventually account for up to one third of the tests performed. As far as a complete accounting of the pros and cons, we'll have to carefully follow the rulemaking process and the comments that are part of that process.

It's no secret that the drug testing landscape is complicated by new illegal compounds and attempts to avoid detection. It seems clear that the motor carrier industry needs to become more sophisticated and welcome new tools that will

provide more accurate detection. Going forward the industry may have to rely on several technologies and understand when and how to use each one.

Changes to CSA

The Federal Motor Carrier Safety Administration (FMCSA) is still in the midst of an overhaul of CSA that was mandated by Congress. That effort has basically stalled. Initial recommendations by the National Academies of Science (NAS) indicated that there were two major deficiencies: the data source and the algorithm used to analyze the data.

The Department of Transportation's Office of Inspector General (OIG) has released a report on FMCSA's plan to overhaul CSA. The OIG's report acknowledges that the NAS report was valid but FMCSA is struggling to find a way to implement it.

For example, one of the recommendations was to utilize Item Response Theory (IRT) to analyze the data since it was far more likely to produce more accurate results regarding motor carrier safety rankings. FMCSA recently completed some small scale testing of IRT but has announced that further more robust testing is at least a year away.

The other main criticism in the NAS report was in the validity and quantity of the data flowing from roadside inspections. With regard to that, FMCSA has not commented on identifying other sources of data to correct this problem. Without better data, future attempts to reform the CSA program will be severely limited.

The good news is the FMCSA has formulated a plan to reform CSA. The bad news is they really don't have a complete plan on how to implement the changes that even they acknowledge should be made.

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